

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1452

H.P. 1064

House of Representatives, April 2, 2019

An Act Regarding the Collection of the Sales and Use Tax by Marketplace Facilitators

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative TIPPING of Orono.
Cosponsored by Senator CHIPMAN of Cumberland and
Representatives: BERRY of Bowdoinham, BICKFORD of Auburn, MAREAN of Hollis,
STANLEY of Medway, Senator: DOW of Lincoln.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 36 MRSA §1754-B, sub-§1, ¶G**, as amended by PL 2013, c. 200, §3, is
3 further amended to read:

4 G. Every seller of tangible personal property or taxable services and every
5 marketplace facilitator, as defined in section 1951-C, subsection 1, paragraph A, that
6 has a substantial physical presence in this State sufficient to satisfy the requirements
7 of the due process and commerce clauses of the United States Constitution;

8 **Sec. 2. 36 MRSA §1951-C** is enacted to read:

9 **§1951-C. Collection of sales and use tax by marketplace facilitators**

10 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
11 following terms have the following meanings.

12 A. "Marketplace facilitator" means a person that contracts with sellers to facilitate
13 for consideration, regardless of whether deducted as fees from the transaction, the
14 sale of a seller's products through a physical or electronic marketplace operated by
15 the person and that engages:

16 (1) Directly or indirectly, through one or more affiliated persons in any of the
17 following:

18 (a) Transmitting or otherwise communicating the offer or acceptance
19 between a buyer and seller;

20 (b) Owning or operating the infrastructure, physical or electronic, or
21 technology that brings buyers and sellers together;

22 (c) Providing a virtual currency that buyers are allowed or required to use to
23 purchase products from the seller; or

24 (d) Software development or research and development activities related to
25 any of the activities described in subparagraph (2), if such activities are
26 directly related to a physical or electronic marketplace operated by the person
27 or an affiliated person; and

28 (2) In any of the following activities with respect to the seller's products:

29 (a) Payment processing services;

30 (b) Fulfillment or storage services;

31 (c) Listing products for sale;

32 (d) Setting prices;

33 (e) Branding sales as those of the marketplace facilitator;

34 (f) Taking orders;

35 (g) Advertising or promotion; or

1 (h) Providing customer service or accepting or assisting with returns or
2 exchanges.

3 B. "Marketplace seller" means a person that makes retail sales through a physical or
4 electronic marketplace operated by a marketplace facilitator.

5 C. "Seller" has the same meaning as in section 1754-B, subsection 1-A, paragraph A,
6 subparagraph (3).

7 **2. Sales made through a marketplace facilitator.** The following provisions govern
8 a marketplace facilitator facilitating sales to buyers in the State.

9 A. Except as provided in paragraph B, a marketplace facilitator facilitating sales to
10 buyers in the State shall collect and remit the sales or use tax on all taxable sales to
11 buyers in the State.

12 B. A marketplace facilitator is not required to collect and remit sales or use tax on a
13 sale from a marketplace seller to a buyer in the State if the marketplace facilitator
14 requests and maintains a copy of the marketplace seller's registration certificate to
15 collect sales and use tax in the State issued under section 1754-B, subsection 2.

16 C. Nothing in this section may be construed to interfere with the ability of a
17 marketplace facilitator and a marketplace seller to enter into agreements with each
18 other regarding fulfillment of the requirements of this chapter.

19 D. A marketplace facilitator is relieved of liability under this section for failure to
20 collect and remit tax to the extent the marketplace seller or the buyer has remitted the
21 sales or use tax at issue.

22 E. A marketplace facilitator is relieved of liability under this section for failure to
23 collect and remit the correct amount of tax to the extent that the error was due to
24 incorrect information given to the marketplace facilitator by the marketplace seller,
25 except that this paragraph does not apply if the marketplace facilitator and the
26 marketplace seller are members of an affiliated group as defined in section 5102,
27 subsection 1-B.

28 F. A marketplace facilitator shall report the sales and use tax collected and remitted
29 under this section separately from any sales or use tax collected on taxable retail sales
30 made directly by the marketplace facilitator or affiliates of the marketplace facilitator
31 to buyers in the State using a separate marketplace facilitator form to be provided by
32 the State Tax Assessor.

33 G. No class action may be brought against a marketplace facilitator in any court of
34 the State on behalf of buyers arising from or in any way related to an overpayment of
35 sales or use tax collected on sales facilitated by the marketplace facilitator, regardless
36 of whether that claim is characterized as a tax refund claim. Nothing in this paragraph
37 affects a buyer's right to seek a refund as provided under section 2011.

38 H. Nothing in this section affects the obligation of a buyer to remit sales or use tax
39 for any taxable transaction for which a marketplace facilitator or marketplace seller
40 does not collect and remit sales or use tax.

41 I. Nothing in this section prohibits the State Tax Assessor from auditing marketplace
42 facilitators or marketplace sellers, except the assessor is prohibited from auditing:

